

WASHINGTON—Since 9/11, Congress has been working to improve America’s national security by providing new tools to fight terrorism while preserving the civil rights and liberties of all Americans.

On Tuesday, February 12, the Senate passed the Foreign Intelligence Surveillance Act (FISA) Amendments Act (S. 2248), a piece of legislation that failed to adequately balance the need for security with protecting the civil rights and civil liberties of the American people. In response to the Senate bill, on Wednesday, February 13, Congressman Joe Sestak (D-PA) voted for H.R. 5349 which would have provided an extension of the Protect America Act (PAA) for 21 days, allowing for adequate time for the House and Senate to work together for a reconciliation that properly balances security with civil rights and civil liberties. The bill failed 191-229.

— “I am disappointed that our Republicans counterparts failed to vote for this extension of the PAA, forcing a vote on the flawed Senate bill. I voted for the extension because I believe that the House should have adequate time to review and then reconcile the differences between the House-passed bill, The RESTORE Act (H.R. 3773), and the Senate’s FISA Amendments Act,” said Congressman Sestak. “That said, when the Protect America Act (PAA) expires in February, I am confident the Intelligence Community will still be able to collect all the intelligence it needs to keep the country safe.”

“The authorizations for wiretapping issued under the PAA will be in effect for up to one full year. This means that all of the surveillance in effect today will remain in effect for at least six more months (since the bill was passed in August),” said Congressman Sestak. “Further, even if a new terrorist group is identified, the Administration will have very broad surveillance authorities beyond the PAA. They merely need to come to the FISA Court and lay out their requests for a warrant; and if it is a time sensitive matter they can do wiretapping and delay coming to the FISA Court for three days. Additionally, before granting immunity to telecommunications companies that have been sued for invasion of privacy, I believe we must understand what information companies were asked and did provide to the government, under the requirements of the existing FISA legislation at the time; the compelling reason is that under the FISA law, only with a FISA court-approved warranted, are records ever to be turned over by telecommunications companies to the government. We need to understand why this system was bypassed before considering immunity for it. I intend to work towards appropriate reconciliation to improve our national security with proper safeguards for our civil liberties and to ensure provisions to properly address telecom immunity in the next three weeks.”

In doing so, Congressman Sestak intends to work for the provisions within the Responsible Electronic Surveillance that is Overseen, Reviewed, and Effective Act of 2007, the "RESTORE Act" (H.R. 3773). The bill provides the U.S. Intelligence Community with effective tools to conduct surveillance of foreign targets outside the United States but restores the Constitutional checks and balances that were not contained in the Foreign Intelligence Surveillance Act (FISA) legislation passed by Congress in August.

"Though I believe the PAA and S. 2248 had the intention of protecting this nation, they impeded upon our very liberties and freedoms," said Congressman Sestak. "They give far too much unchecked power to the Executive Branch, to both the Attorney General and President Bush. I am deeply committed to increasing our national security and utilizing any tools we have to protect our homeland and our engagements abroad. However, as a Congressman, one of my sworn oaths is to uphold and protect the Constitution of the United States – a model of liberty and a beacon of freedom. This new legislation will improve our intelligence gathering capabilities while safeguarding the liberties that make this nation admired all over the world."

The FISA court was created in 1978 to allow the intelligence community to listen in on foreign communications – such as phone calls – while protecting Americans' privacy. It was needed because there were concerns at the time that our intelligence gathering agencies were listening to Americans' conversations without cause. The point of the court is that the Attorney General would need to get permission from the FISA court to listen in on calls made from outside the country to someone inside America that is suspected of posing threats. The law currently allows the Attorney General to listen-in for 72 hours before going to the FISA court for a warrant – in an emergency – so that coming to the court will not interfere with timely surveillance on terrorist activity. In short, an intelligence agency can listen for three days, in an emergency, and then go get a warrant while continuing its investigation. The RESTORE Act does not change this aspect of our surveillance program in any way.

The RESTORE Act clarifies that FISA is the exclusive means to conduct electronic surveillance of Americans for the purpose of foreign intelligence collection. It clarifies that no court warrant is required to intercept communications of non-United States persons when both ends of the communication are outside the United States, but requires an individualized court warrant from the FISA Court when targeting Americans in the United States.

The legislation also provides new authorities for surveillance of foreign targets outside the United States, while restoring certain checks and balances that were present in previous legislation to protect civil liberties. Specifically, the RESTORE Act establishes procedures to create a new program of court authorized targeting of non-U.S. persons outside the United States, when one of the ends of communication is within the United States. It grants the Attorney General and Director of National Intelligence authority to apply to the FISA Court for a single order to conduct surveillance of multiple foreign targets for up to one year, but restores critical checks and balances that are currently absent under the Protect America Act, the Administration's FISA Bill.

These safeguards include:

Court Review of Targeting Procedures, where the FISA Court must review targeting procedures on a quarterly basis to ensure that they are reasonably designed to protect Americans and target only people outside the United States (and, if in the United States, that authority has been obtained).

Court Review of Minimization Procedures, where the FISA Court must review to protect minimization procedures on a quarterly basis to protect data collected from Americans. Minimization refers to what the government does with information that they collect on people in the United States when they get that information incidentally while tapping someone purportedly outside of the United States (so for example, if a U.S. citizen name and other information about him/her inadvertently is obtained, that information is removed).

Court Review of Compliance with Guidelines on a quarterly basis to ensure that when the government seeks to conduct electronic surveillance of Americans, the government obtains traditional individualized warrants from the FISA Court.

The RESTORE Act will also limit the authority of the Intelligence community to conduct surveillance from a broad definition related to "foreign affairs," allowing surveillance dealing with threats facing the United States from terrorism, espionage, sabotage, and clandestine intelligence activities, as well as to correct information related to the national defense or security of the United States.

The bill requires audits by the Justice Department Inspector General to be provided to the FISA Court and to Congress every 120 days on communications collected under this authority and the number of U.S. persons identified in intelligence reports disseminated pursuant to this collection. It also requires semi-annual audits to Congress of the President's Surveillance Program and other warrantless surveillance programs in an unclassified form with a classified annex, and requires the President to brief Congress on such programs within seven days of the law's enactment.

The bill will also add funding for training, personnel and technology resources at Department of Justice (DOJ), National Security Agency (NSA) and the FISA Court to speed the FISA process and to ensure that audits can be conducted expeditiously.

The bill also does the following:

- Ensures that nothing in the bill inhibits lawful surveillance for the purpose of protecting the nation and the troops from threats posed by Osama Bin Laden and Weapons of Mass Destruction
- Mandates that the Executive Branch record every instance in which the identity of a U.S. person whose communication was acquired by the intelligence community is disseminated within the Executive Branch and that it submit an annual report to Congress on such dissemination.
- Reiterates the exclusivity of FISA by including the House-passed bipartisan language stating that FISA is the exclusive means to conduct electronic surveillance of Americans for the purpose of foreign intelligence collection.
- Provides no retroactive immunity. While the Administration has not provided Congress with documents on the specifics of the President's warrantless surveillance program, the bill does provide immunity for those complying with court orders issued pursuant to this authority.

"As Director of the Navy's anti-terrorism unit after 9/11, I saw the value of data-mining facilitated by proper eavesdropping. However, I also understand the FISA system and its role in the proper balance of civil liberties with national security needs. This bill protects both the American people and their civil liberties as written in our Constitution," added the Congressman.

Born and raised in Delaware County, former 3-star Admiral Joe Sestak served in the Navy for 31 years and now serves as the Representative from the 7th District of Pennsylvania. He led a series of operational commands at sea, including Commander of an aircraft carrier battle group of 30 U.S. and allied ships with over 15,000 sailors and 100 aircraft that conducted operations in Afghanistan and Iraq. After 9/11, Joe was the first Director of "Deep Blue," the Navy's anti-terrorism unit that established strategic and operations policies for the "Global War on Terrorism." He served as President Clinton's Director for Defense Policy at the National Security Council in the White House, and holds a Ph.D. in Political Economy and Government from Harvard University. According to the office of the House Historian, Joe is the highest-ranking former military officer ever elected to the U.S. Congress.